

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RAHSAAN A. ADAMS,

Petitioner,

05 Civ. 5576 (RPP)

**OPINION & ORDER**

CRAIG APKER, Warden in his official capacity,

Respondent.

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**ROBERT P. PATTERSON, JR., U.S.D.J.**

Petitioner Rahsaan Adams brings this Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner requests that this Court order Respondent Craig Apker, Warden of the Federal Correctional Institution at Otisville, New York, to consider transferring him to a community confinement center in good faith, in light of the factors set forth in 18 U.S.C. § 3621(b), without reference to the Bureau of Prison's February 2005 Rule, 28 C.F.R. § 570.21. Petitioner challenges 28 C.F.R. § 570.21 on the grounds that the February 2005 Rule is contrary to the BOP's governing statutes.

The Second Circuit recently held that "in transferring an inmate to a CCC or any 'available penal or correctional facility,' the BOP must consider the factors set forth in § 3621(b), without reference to 28 C.F.R. § 570.21." Levine v. Apker, No. 05-2590, 2006 WL 1901020, at \*13 (2d Cir. July 10, 2006). In light of that decision, this Court orders Respondent to consider, in good faith, transferring Petitioner to a community confinement center, in light of the factors set forth in 18 U.S.C. § 3621(b), without reference to the Bureau of Prison's February 2005 Rule, 28 C.F.R. § 570.21. The Court

orders that Respondent make this determination promptly, and no later than twenty (20) days from the date of this Court's order.

IT IS SO ORDERED.

Dated: New York, New York  
August 2, 2006

  
Robert P. Patterson, Jr.  
U.S.D.J.

Copy of this Order sent to:

*Petitioner*

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*Respondent*

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